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HOUSE BILL 215

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Mimi Stewart

AN ACT

**RELATING TO CONSUMER PROTECTION; REQUIRING REMOVAL OF RADIO
FREQUENCY IDENTIFICATION TAGS ON CONSUMER GOODS AT POINTS OF
PURCHASE; REQUIRING LIMITS ON BUSINESS RELEASE OF PERSONAL
INFORMATION; PRESCRIBING PENALTIES.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. SHORT TITLE.--This act may be cited as the
"Radio Frequency Identification Right to Know Act".**

**Section 2. DEFINITIONS.--As used in the Radio Frequency
Identification Right to Know Act:**

**A. "affiliate" means a person related to a business
that carries on direct or related functions of the business;**

**B. "business" means a corporation, partnership or
other entity that collects or aggregates a person's personal
information or a merchant that sells consumer goods;**

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1 C. "deactivate" means to disable or otherwise
2 render unusable;

3 D. "items" means consumer goods offered for sale by
4 a business;

5 E. "package" means the wrapping or other external
6 container surrounding an item;

7 F. "personal information" means information that a
8 business can use to identify a person, including the name,
9 address, social security number and financial data of the
10 person;

11 G. "radio frequency identification" means
12 identification by technologies that use radio waves or other
13 means to identify consumer goods automatically; and

14 H. "tag" means a device that is able to transmit
15 consumer identification information from an item to a business
16 or affiliate.

17 Section 3. NOTICES. --

18 A. A business that collects or carries items
19 containing tags shall post a notice so informing consumers.
20 Such notice shall state: "This business carries items with
21 radio frequency identification tags. New Mexico law requires
22 that this business remove or disable all radio frequency
23 identification tags before tagged items leave this business and
24 requires this business to provide consumers, on request, with
25 personal information gathered within the business. To file a

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1 request for personal information gathered on you through radio
2 frequency identification tags used in this business, please
3 contact the manager of this business. "

4 B. A business shall post the notice described in
5 Subsection A of this section within ten feet of every entrance
6 to a business that offers items or packages with tags. Such
7 notice shall be unobstructed, posted at eye level and shall be
8 readable by an average viewer from a distance of ten feet.

9 C. Upon written request of a consumer, a business
10 that has gathered personal information through tags shall
11 release to the requester all of its stored personal information
12 pertaining to the requester. A business may provide a form for
13 such requests.

14 D. A business shall label each item or package that
15 contains or bears a tag with a notice stating that the item or
16 package contains or bears a tag, and that the tag can transmit
17 unique identification information to an independent reader both
18 before and after purchase.

19 E. The label shall be posted on the item or package
20 in a conspicuous type size and location and in print that
21 contrasts with the background against which it appears.

22 Section 4. REMOVAL. -- A business that offers items or
23 packages that contain or bear tags shall remove or deactivate
24 all tags at the point of purchase. In addition:

25 A. costs and labor for removal or deactivation of a

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1 tag shall be borne by the business;

2 B. a business shall not coerce consumers into
3 keeping tags on items or packages by requiring returned items
4 or packages to contain or bear active tags; and

5 C. a tag, once removed or deactivated, shall not be
6 reactivated without express consent of the consumer associated
7 with the tagged item.

8 Section 5. AGGREGATION OF PERSONAL INFORMATION AND TAG
9 IDENTIFICATION INFORMATION. --

10 A. A business shall not combine or link a
11 consumer's personal information with tag identification
12 information, beyond what is required to manage inventory.

13 B. A business shall not, directly or through an
14 affiliate, disclose to a nonaffiliated third party a consumer's
15 personal information in association with tag identification
16 information.

17 C. A business shall not, directly or through an
18 affiliate or nonaffiliated third party, use tag identification
19 information to identify a consumer.

20 Section 6. ENFORCEMENT BY ATTORNEY GENERAL. --The attorney
21 general shall enforce the provisions of the Radio Frequency
22 Identification Right to Know Act.

23 Section 7. VIOLATIONS--PENALTY. --

24 A. The attorney general may investigate a reported
25 violation of the Radio Frequency Identification Right to Know

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1 Act and shall promptly conduct an investigation to determine
2 whether grounds exist for formally finding a violation. If the
3 attorney general makes that finding, the attorney general shall
4 file an appropriate action against the alleged violator in a
5 court of competent jurisdiction.

6 B. In an action brought by the attorney general for
7 a violation pursuant to the provisions of the Radio Frequency
8 Identification Right to Know Act, the district court may order
9 temporary or permanent injunctive relief. The district court
10 shall order restitution and such other relief as may be
11 necessary to redress injury to a person resulting from the
12 violation.

13 C. A person may bring an action for violations of
14 the Radio Frequency Identification Right to Know Act in the
15 district court of the county that is the principal place of
16 business of the business or in the district court in any county
17 in which the business has failed to remove or deactivate tags
18 from items leaving the business.

19 D. Upon a showing that the Radio Frequency
20 Identification Right to Know Act is being violated, the court
21 shall award damages and order injunctive relief and shall award
22 the cost of the suit, including reasonable attorney fees, to
23 the prevailing party.

24 Section 8. SEVERABILITY.--If any part or application of
25 the Radio Frequency Identification Right to Know Act is held

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1 invalid, the remainder or its application to other situations
2 or persons shall not be affected.

3 Section 9. EFFECTIVE DATE. --The effective date of the
4 provisions of this act is July 1, 2005.

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